

## SUBCHAPTER M—TOWING VESSELS

### PART 136—CERTIFICATION

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#### Subpart A—General

##### § 136.100 Purpose.

This part sets out the applicability for this subchapter and describes the requirements for obtaining and renewing a Certificate of Inspection (COI).

##### § 136.105 Applicability.

(a) This subchapter is applicable to all U.S.-flag towing vessels as defined in § 136.110 engaged in pushing, pulling, or hauling alongside, except—

(1) A vessel less than 26 feet (7.92 meters) in length measured from end to end over the deck (excluding the sheer), unless that vessel is pushing,

pulling, or hauling a barge that is carrying oil or hazardous material in bulk;

(2) A vessel engaged in one or more of the following:

(i) Assistance towing as defined in § 136.110;

(ii) Towing recreational vessels for salvage; or

(iii) Transporting or assisting the navigation of recreational vessels within and between marinas and marina facilities, within a limited geographic area, as determined by the local Captain of the Port (COTP);

(3) A workboat operating exclusively within a worksite and performing intermittent towing within the worksite;

(4) A seagoing towing vessel of 300 gross tons or more subject to the provisions of subchapter I of this chapter;

(5) A vessel inspected under other subchapters of this chapter that may perform occasional towing;

(6) A public vessel as defined in 46 U.S.C. 2101;

(7) A vessel that has surrendered its COI and is laid up, dismantled, or otherwise out of service; and

(8) A propulsion unit used for the purpose of propelling or controlling the direction of a barge where the unit is controlled from the barge, is not normally manned, and is not utilized as an independent vessel.

(b) [Reserved]

##### § 136.110 Definitions.

As used in this subchapter:

*ABS Rules* means the standards developed and published by the American Bureau of Shipping regarding the design, construction and certification of commercial vessels.

*Accommodation space* means any:

- (1) Messroom;
- (2) Lounge;
- (3) Sitting area;
- (4) Recreation room;
- (5) Quarters;
- (6) Toilet space;
- (7) Shower room;
- (8) Galley;
- (9) Berthing space;
- (10) Clothing-changing room; or

(11) A similar space open to individuals.

*Anniversary date* means the day and the month of each year that corresponds to the date of expiration on the COI or Towing Safety Management System (TSMS) Certificate.

*Approval series* means the first six digits of a number assigned by the Coast Guard to approved equipment. Where approval is based on a subpart of 46 CFR chapter I, subchapter Q, the approval series corresponds to the number of the subpart. A list of approved equipment, including all of the approval series, is available at <http://cgmix.uscg.mil/Equipment/EquipmentSearch.aspx>.

*Assistance towing* means towing a disabled vessel for consideration as defined in 46 U.S.C. 2101.

*Audit* means a systematic, independent, and documented examination to determine whether activities and related results comply with a vessel's TSMS, or with another applicable Safety Management System (SMS), and whether these planned arrangements are implemented suitably to achieve stated objectives. This examination includes a thorough review of appropriate reports, documents, records, and other objective evidence to verify compliance with applicable requirements.

(1) The audit may include, but is not limited to:

- (i) Examining records;
- (ii) Asking responsible persons how they accomplish their assigned duties;
- (iii) Observing persons performing specific tasks within their assigned duties;
- (iv) Examining equipment to ensure proper maintenance and operation; and
- (v) Checking training records and work environments.

(2) The audit may be limited to the random selection of a representative sampling throughout the system that presents the auditor with sufficient, objective evidence of system compliance.

*Authorized classification society* means a recognized classification society that has been delegated the authority to conduct certain functions and certifications on behalf of the Coast Guard.

*Berthing space* means a space that is intended to be used for sleeping, and is

provided with installed bunks and bedding.

*Bollard pull* means the maximum static pulling force that a towing vessel can exert on another vessel or on an object when its propulsion engines are applying thrust at maximum horsepower.

*Change in ownership* means any change resulting in a change in the day-to-day operational control of a third-party organization (TPO) that conducts audits and surveys, or a change that results in a new entity holding more than 50 percent of the ownership of the TPO.

*Class Rules* means the standards developed and published by a classification society regarding the design, construction, and certification of commercial vessels.

*Coastwise* means a route that is not more than 20 nautical miles offshore on:

- (1) Any ocean;
- (2) The Gulf of Mexico;
- (3) The Caribbean Sea;
- (4) The Bering Sea;
- (5) The Gulf of Alaska; or
- (6) Such other similar waters as may be designated by a Coast Guard District Commander.

*Cold water* means water where the monthly mean low water temperature is normally 15 degrees Celsius (59 degrees Fahrenheit) or less.

*Commandant* means the Commandant of the U.S. Coast Guard or an authorized representative of the Commandant of the U.S. Coast Guard.

*Conflict of interest* means a conflict between an individual's or an organization's private interests and the interests of another party they are providing a service to or for, including when acting in a capacity which serves the public good.

*Crewmember* means crewmember as defined in 46 CFR 16.105.

*Deficiency* means a failure to meet the minimum requirements of the vessel inspection laws or regulations.

*Disabled vessel* means a vessel that needs assistance, whether docked, moored, anchored, aground, adrift, or under way, but does not mean a barge or any other vessel not regularly operated under its own power.

*Downstreaming* means a procedure in which a towing vessel moves downstream with the current in order to approach and land squarely on another object, such as a fleet, a dock, or another tow.

*Drydock examination* means hauling out a vessel or placing a vessel in a drydock or slipway for an examination of all accessible parts of the vessel's underwater body and of all through-hull fittings and appurtenances.

*Electronic position fixing device* means a navigation receiver that meets the requirements of 33 CFR 164.41.

*Engine room* means the enclosed space where any main-propulsion engine is located. It comprises all deck levels within that space.

*Essential system* means a system that is required to ensure a vessel's survivability, maintain safe operation, control the vessel, or to ensure safety of onboard personnel, including:

- (1) Systems for:
  - (i) Detection or suppression of fire;
  - (ii) Emergency dewatering or ballast management;
  - (iii) Navigation;
  - (iv) Internal and external communication;
  - (v) Vessel control, including propulsion, steering, maneuverability and their vital auxiliaries;
  - (vi) Emergency evacuation and abandonment;
  - (vii) Lifesaving; and
  - (viii) Control of a tow;
- (2) Any critical system identified in a SMS compliant with the International Safety Management (ISM) Code requirements of 33 CFR part 96; and
- (3) Any other marine engineering system identified in an approved TSMS or identified by the cognizant Officer in Charge, Marine Inspection (OCMI) as essential to the vessel's survival, ability to maintain safe operation, ability to control the vessel, or to ensure the safety of onboard personnel.

*Excepted vessel* means a towing vessel that is subject to this subchapter but is excepted from certain provisions contained within this subchapter. An excepted vessel is:

- (1) Used solely:
  - (i) Within a limited geographic area, as defined in this section;

- (ii) For harbor-assist, as defined in this section; or

- (iii) For response to an emergency or a pollution event; or

- (2) Excepted by the cognizant OCMI for purposes of some or all of the requirements in §§142.315 through 142.330, 143.235, 143.265, and subpart C of part 143 of this subchapter, based on consideration of those requirements and on reasons submitted by the vessel owner or managing operator as to why the vessel does not need to meet these requirements for the safe operation of the vessel.

*Excursion party* means a temporary operation not permitted by the vessel's COI. It is typically recreational in nature and 1 day or less in duration.

*Existing towing vessel* means a towing vessel, subject to inspection under this subchapter, that is not a new towing vessel, as defined in this section.

*External audit* means an audit conducted by a party with no direct affiliation to the vessel, owner, or managing operator being audited.

*External survey program* means a survey program conducted by a party with no direct affiliation to the vessel, owner, or managing operator being surveyed.

*Fixed fire-extinguishing system* means:

- (1) A carbon dioxide system that meets the requirements of 46 CFR subpart 76.15 and 46 CFR 78.47–9 and 78.47–11, and that is approved by the Commandant;

- (2) A clean agent system that satisfies the requirements in 46 CFR subpart 95.16 and in 46 CFR 97.37–9, and is approved by the Commandant; or

- (3) A manually operated, water mist system that satisfies NFPA 750 (incorporated by reference, see §136.112) and is approved by the Commandant.

*Fleeting area* means a limited geographic area, as determined by the local COTP, where individual barges are moored or assembled to make a tow. These barges are not in transport, but are temporarily marshaled and waiting for pickup by different towing vessels that will transport them to various destinations.

*Galley* means a space containing appliances with cooking surfaces that

may exceed 121 degrees Celsius (250 degrees Fahrenheit) such as ovens, griddles, and deep fat fryers.

*Great Lakes* means a route on the waters of any of the Great Lakes and of the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along the 63rd meridian from Anticosti Island to the north shore of the St. Lawrence River.

*Gross tons* means the gross ton measurement of the vessel under 46 U.S.C. Chapter 145, Regulatory Measurement. For a vessel measured under only 46 U.S.C. Chapter 143, Convention Measurement, the vessel's gross tonnage measured under 46 U.S.C. Chapter 143 is used to apply all thresholds expressed in terms of gross tons.

*Harbor of safe refuge* means a port, inlet, or other body of water normally sheltered from heavy seas by land, and in which a vessel can navigate and safely moor. The suitability of a location as a harbor of safe refuge will be determined by the cognizant OCMI, and varies for each vessel, dependent on the vessel's size, maneuverability, and mooring gear.

*Harbor-assist* means the use of a towing vessel during maneuvers to dock, undock, moor, or unmoor a vessel, or to escort a vessel with limited maneuverability.

*Horsepower* means the horsepower stated on the vessel's COI, which is the sum of the manufacturer's listed brake horsepower for all installed propulsion engines.

*Inland waters* means the navigable waters of the United States shoreward of the Boundary Lines as described in 46 CFR part 7, excluding the Great Lakes and, for towing vessels, excluding the Western Rivers.

*Internal Audit* means an audit that is conducted by a party that has a direct affiliation to the vessel, owner, or managing operator being audited.

*Internal survey program* means a survey program that is conducted by a party which has a direct affiliation to the vessel, owner, or managing operator being surveyed.

*International voyage* means a voyage between a country to which the International Convention for Safety of Life at Sea, 1974, as amended (SOLAS) ap-

plies and a port outside that country. A country, as used in this definition, includes every territory for the international relations of which a contracting government to the Convention is responsible or for which the United Nations is the administering authority. For the United States, the term "territory" includes the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the United States under a protectorate or mandate. For the purposes of this subchapter, vessels are not considered as being on an "international voyage" when solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd meridian.

*Lakes, bays, and sounds* means a route on any of the following waters:

- (1) A lake other than the Great Lakes.
- (2) A bay.
- (3) A sound.
- (4) Such other similar waters as may be designated by the cognizant Coast Guard District Commander.

*Length* means the horizontal distance measured from end to end over the deck, excluding the sheer. Fittings and attachments are not included in the length measurement.

*Length between perpendiculars* or *LBP* means the horizontal distance measured between perpendiculars taken at the forward-most and after-most points on the waterline corresponding to the deepest operating draft. For a vessel that has underwater projections extending forward of the forward-most point or aft of the after-most point on the deepest waterline of the vessel, the Commanding Officer, U.S. Coast Guard Marine Safety Center, may include the length or a portion of the length of the underwater projections in the value used in the LBP for the purposes of this subchapter. The length, or a portion of the length, of projections that contribute more than 2 percent of the underwater volume of the vessel is normally added to the actual LBP.

*Limited coastwise* means a route that is not more than 20 nautical miles from a harbor of safe refuge, as defined in this section.

*Limited geographic area* means a local area of operation as determined by the local COTP. This area is usually within a single harbor or port.

*Machinery space* means any enclosed space that either contains an installed internal combustion engine, machinery, or systems that would raise the ambient temperature above 45 degrees Celsius (113 degrees Fahrenheit) in all environments the vessel operates in.

*Major conversion* means a conversion of a vessel that:

- (1) Substantially changes the dimensions or carrying capacity of the vessel;
- (2) Changes the type of the vessel;
- (3) Substantially prolongs the life of the vessel; or
- (4) Otherwise so changes the vessel that it is essentially a new vessel, as determined by the Commandant.

*Major non-conformity* means a non-conformity that poses a serious threat to personnel, vessel safety, or the environment, and requires immediate corrective action.

*Managing operator* means an organization or person, such as the manager or the bareboat charterer of a vessel, who has assumed the responsibility for operation of the vessel from the vessel owner and who, on assuming responsibility, has agreed to take over all the duties and responsibilities imposed by this subchapter.

*Nationally recognized testing laboratory* or *NRTL* means an organization that the Occupational Safety and Health Administration (OSHA) has recognized as meeting the requirements in 29 CFR 1910.7. These requirements are for the capability, control programs, complete independence, and reporting and complaint-handling procedures to test and certify specific types of products for workplace safety. This means, in part, that an organization must have the necessary capability both as a product safety testing laboratory and as a product certification body to receive OSHA recognition as an NRTL.

*New towing vessel* means a towing vessel, subject to inspection under this subchapter, that:

- (1) Had its keel laid or was at a similar stage of construction on or after July 20, 2017; or

- (2) Underwent a major conversion that was initiated on or after July 20, 2017.

*Non-conformity* means a situation where objective evidence indicates that a specified SMS requirement is not fulfilled.

*Objective evidence* means quantitative or qualitative information, records, or statements of fact pertaining to safety or to the existence and implementation of an SMS element, which is based on observation, measurement, or testing that can be verified. This may include, but is not limited to, towing gear equipment certificates and maintenance documents, training records, repair records, Coast Guard documents and certificates, surveys, classification society reports, or TPO records.

*Oceans* means a route that is more than 20 nautical miles offshore on any of the following waters:

- (1) Any ocean.
- (2) The Gulf of Mexico.
- (3) The Caribbean Sea.
- (4) The Bering Sea.
- (5) The Gulf of Alaska.
- (6) Such other similar waters as may be designated by the cognizant Coast Guard District Commander.

*Officer in Charge, Marine Inspection* or *OCMI* means an officer of the Coast Guard designated as such by the Coast Guard and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in 33 CFR part 3, for the performance of duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations. The “cognizant OCMI” is the OCMI who has immediate jurisdiction over a vessel for the purpose of performing these duties.

*Officer in charge of a (or the) navigational watch* means the same as in 46 CFR 10.107.

*Oil or hazardous material in bulk*, as used in this subchapter, means that the towing vessel tows, pushes, or hauls alongside a tank barge or barges certificated to carry cargoes under subchapters D or O of this chapter.

*Operating station* means a steering station on the vessel, or the barge being towed or pushed, from which the vessel is normally navigated.

*Owner* means the owner of a vessel, as identified on the vessel's certificate of documentation or state registration.

*Persons in addition to the crew* mean any people onboard the vessel, including passengers, who are not a crew-member.

*Policy* means a specific statement of principles or a guiding philosophy that demonstrates a clear commitment by management, or a statement of values or intentions that provide a basis for consistent decision making.

*Power and lighting circuit* means a branch circuit as defined in Article 100 of NFPA's National Electrical Code (NEC) (incorporated by reference, see §136.112) that serves any essential system, distribution panel, lighting, motor or motor group, or group of receptacles. Where multiple loads are served, the circuit is considered to be the conductor run that will carry the current common to all the loads. "Power limited circuit" conductors under Article 725 of the NEC and "instrumentation" conductors under Article 727 of the NEC are not considered to be power and lighting circuits.

*Pressure vessel*, fired or unfired, means a closed tank or cylinder containing gas, vapor, or liquid, or a combination thereof, under pressure greater than atmospheric pressure.

*Procedure* means a specification of a series of actions or operations that must be executed in the same manner in order to uniformly comply with applicable policies.

*Protected waters* means sheltered waters presenting no special hazards, such as most rivers, harbors, and lakes, and that is not determined to be exposed waters or partially protected waters by the cognizant OCMI.

*Propulsor* means a device (e.g., propeller or water jet) that imparts force to a column of water in order to propel a vessel, together with any equipment necessary to transmit the power from the propulsion machinery to the device (shafting, gearing, etc.).

*Recognized classification society* means a classification society recognized by the Coast Guard in accordance with part 8 of this chapter.

*Replacement in kind* means replacement of equipment or components that have the same technical specifications

as the original item and provide the same service. If the replacement item upgrades the system in any way, the change is not a replacement in kind.

*Rescue boat* means a boat designed to rescue persons in distress and to marshal survival craft.

*Rivers* means a route on any river, canal, or other similar body of water designated by the cognizant OCMI.

*Safety Management System* or *SMS* means a structured and documented system that enables personnel involved in vessel operations or management, as identified in the SMS, to effectively implement the safety and environmental protection requirements of this subchapter, and is routinely exercised and audited.

*Skiff* means a small auxiliary boat carried on board a towing vessel.

*Survey* means an examination of the vessel, including its systems and equipment, to verify compliance with applicable regulations, statutes, conventions, and treaties.

*Terminal gear* means the additional equipment or appurtenances at either end of the hawser or tow cable that connects the towing vessel and its tow together. Terminal gear may include such items as winches, thimbles, chafing gear, shackles, pendants, or bridles.

*Third-party organization* or *TPO* means an organization approved by the Coast Guard to conduct independent verifications to assess whether towing vessels or their TSMSs comply with applicable requirements contained in this subchapter.

*Tow* means the barge(s), vessel(s), or object(s) being pulled, pushed, or hauled alongside a towing vessel.

*Towing vessel* means a commercial vessel engaged in or intending to engage in the service of pulling, pushing, or hauling alongside, or any combination of pulling, pushing, or hauling alongside.

*Towing Safety Management System* or *TSMS* means an SMS for a towing vessel as described in part 138 of this subchapter.

*Towing vessel record* or *TVR* means a book, notebook, or electronic record used to document events as required by this subchapter.

*Unsafe condition* means a major non-conformity observed on board a vessel,

or an incident that would cause the owner or managing operator to request a permit to proceed from the Coast Guard.

*Unsafe practice* means a habitual or customary action or method, or a single action, that creates a significant risk of harm to life, property, or the marine environment, or that contravenes a recognized standard of care contained in law; regulation; applicable international convention; or international, national, or industry consensus standard.

*Warm water* means water where the monthly mean low water temperature is normally more than 15 degrees Celsius (59 degrees Fahrenheit).

*Western Rivers* means the Mississippi River, its tributaries, South Pass, and Southwest Pass, to the navigational demarcation lines dividing the high seas from harbors, rivers, and other inland waters of the United States, and the Port Allen-Morgan City Alternate Route, and that part of the Atchafalaya River above its junction with the Port Allen-Morgan City Alternate Route including the Old River and the Red River, and those waters specified in 33 CFR 89.25 and 89.27, and such other, similar waters as are designated by the COTP.

*Workboat* means a vessel that pushes, pulls, or hauls alongside within a work-site.

*Worksite* means an area specified by the cognizant OCMI within which workboats are operated over short distances for moving equipment in support of dredging, construction, maintenance, or repair work. A worksite may include shipyards, owner's yards, or lay-down areas used by marine construction projects. This definition does not include the movement of barges carrying oil or hazardous material in bulk.

*Work space* means any area on the vessel where the crew may be present while on duty and performing their assigned tasks.

**§ 136.112 Incorporation by reference.**

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register under 5 U.S.C 552(a) and 1 CFR part 51. To enforce any edition

other than that specified in this section, the Coast Guard must publish a document in the FEDERAL REGISTER and the material must be available to the public. All approved material is available for inspection at the U.S. Coast Guard, Office of Design and Engineering Standards (CG-ENG), 2703 Martin Luther King Jr. Avenue SE., Stop 7509, Washington, DC 20593-7509, and is available from the sources listed below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030 or go to: [http://www.archives.gov/federal\\_register/code\\_of\\_federalregulations/ibr\\_locations.html](http://www.archives.gov/federal_register/code_of_federalregulations/ibr_locations.html).

(b) American Boat and Yacht Council (ABYC), 613 Third Street, Suite 10, Annapolis, MD 21403, 410-990-4460, <http://www.abycinc.org/>.

(1) E-11 (2003)—AC and DC Electrical Systems on Boats, dated July 2003, IBR approved for §143.520(a) of this subchapter.

(2) H-2 (2000)—Ventilation of Boats Using Gasoline, dated July 2000, IBR approved for §143.520(a) of this subchapter.

(3) H-22 (2005)—Electric Bilge Pump Systems, dated July 2005, IBR approved for §143.520(a) of this subchapter.

(4) H-24 (2007)—Gasoline Fuel Systems, dated July 2007, IBR approved for §143.520(a) of this subchapter.

(5) H-25 (2003)—Portable Gasoline Fuel Systems, reaffirmed July 2003, IBR approved for §§143.265(b) and 143.520(a) of this subchapter.

(6) H-32 (2004)—Ventilation of Boats Using Diesel Fuel, dated July 2004, IBR approved for §143.520(a) of this subchapter.

(7) H-33 (2005)—Diesel Fuel Systems, dated July 2005, IBR approved for §§143.265(e) and 143.520(a) of this subchapter.

(8) P-1 (2002)—Installation of Exhaust Systems for Propulsion and Auxiliary Engines, dated July 2002, IBR approved for §§143.520(a) and 144.415 of this subchapter.

(9) P-4 (2004)—Marine Inboard Engines and Transmissions, dated July 2004, IBR approved for §143.520(a) of this subchapter.

(c) American Bureau of Shipping (ABS), ABS Plaza, 16855 Northchase Drive, Houston, TX 77060, 281-877-5800, <http://www.eagle.org>.

(1) Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 2007, IBR approved for §§ 143.515(a), 143.540(b), 143.550(a), 143.580(b), and 144.205(a) of this subchapter.

(2) Rules for Building and Classing Steel Vessels Under 90 Meters (295 Feet) in Length, 2006, including Supplement to Part 1 (dated January 1, 2008) and Corrigenda Notices 1 to 13 (in effect as of July 1, 2010), IBR approved for §§ 143.515(a), 143.540(a), 143.545(b), 143.550(a), 143.555(b), 143.580(a), 143.600, and 144.205(a) of this subchapter.

(d) American Society for Quality (ASQ), Quality Press, P.O. Box 3005, Milwaukee, WI 53201-3005, 800-248-1946, <http://asq.org/>.

(1) ANSI/ISO/ASQ Q9001-2000, Quality management systems—Requirements, approved December 13, 2000, IBR approved for §§ 138.310(d), 139.120(d) and 139.130(b) of this subchapter.

(2) [Reserved]

(e) FM Approvals, P.O. Box 9102, Norwood, MA 02062, 781-440-8000, <http://www.fmglobal.com/>.

(1) Approval Standard for Storage Cabinets (Flammable and Combustible liquids), Class Number 6050 (Standard 6050), dated December 1996, IBR approved for § 142.225(c) of this subchapter.

(2) [Reserved]

(f) International Maritime Organization (IMO), Publications Section, 4 Albert Embankment, London SE1 7SR, United Kingdom, +44 (0)20 7735 7611, <http://www.imo.org/>.

(1) Resolution A.520(13)—Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Life-saving Appliances and Arrangements, adopted November 17, 1983, IBR approved for § 141.225(c) of this subchapter.

(2) Resolution A.658(16)—Use and Fitting of Retro-Reflective Materials on Life-saving Appliances, adopted October 19, 1989, IBR approved for § 141.340(f) of this subchapter.

(3) Resolution A.688(17)—Fire Test Procedures For Ignitability of Bedding Components, adopted November 6, 1991,

IBR approved for § 144.430(b) of this subchapter.

(4) Resolution A.760(18)—Symbols Related to Life-Saving Appliances and Arrangements, adopted November 4, 1993, IBR approved for § 141.340(h) of this subchapter.

(5) International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), Consolidated Edition (including Erratum), 2009, IBR approved for §§ 136.115(b), 141.105(b) and (c), and 142.205(a) of this subchapter.

(g) International Organization for Standardization (ISO), Case Postal 56, CH-1211 Geneva 20, Switzerland, +41 22 749 01 11, <http://www.iso.org/>.

(1) ISO 9001:2008(E)—International Standard: Quality management systems—Requirements, Fourth edition, dated November 15, 2008 (corrected version dated July 15, 2009), IBR approved for §§ 138.310(d) and 139.130(b) of this subchapter.

(2) ISO 14726:2008(E)—International Standard: Ships and marine technology—Identification colours for the content of piping systems, First edition, dated May 1, 2008, IBR approved for § 143.250(e) of this subchapter.

(h) National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02169, 800-344-3555, <http://www.nfpa.org/>.

(1) NFPA 10—Standard for Portable Fire Extinguishers, 2007 Edition, effective August 17, 2006, IBR approved for § 142.240(a) of this subchapter.

(2) NFPA 70—National Electrical Code (NEC), 2002 Edition, effective August 2, 2001, IBR approved for §§ 136.110, 143.555(b), and 143.565(b) of this subchapter.

(3) NFPA 302—Fire Protection Standard for Pleasure and Commercial Motor Craft, 1998 Edition, IBR approved for §§ 143.265(e) and 144.415 of this subchapter.

(4) NFPA 306—Standard for the Control of Gas Hazards on Vessels, 2014 Edition, effective June 17, 2013, IBR approved for § 140.665(a) of this subchapter.

(5) NFPA 750—Standard on Water Mist Fire Protection Systems, 2006 Edition, effective February 16, 2006, IBR approved for § 136.110.

(6) NFPA 1971—Standard on Protective Ensembles for Structural Fire-

## § 136.115

Fighting and Proximity Fire-Fighting, 2007 Edition, effective August 17, 2006, IBR approved for §142.226(a) of this subchapter.

(i) Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096, 724-776-4841, <http://www.sae.org/>.

(1) ANSI/SAE Z 26.1-1996, American National Standard for Safety Glazing Materials for Glazing Motor Vehicles and Motor Vehicle Equipment Operating on Land Highways—Safety Standard, approved August 11, 1997, IBR approved for §144.905(e) of this subchapter.

(2) SAE J1475 Revised JUN96—Hydraulic Hose Fitting for Marine Applications, revised June 1996, IBR approved for §143.265(d) of this subchapter.

(3) SAE J1942 Revised APR2007—Hose and Hose Assemblies for Marine Applications, revised April 2007, IBR approved for §143.265(d) of this subchapter.

(j) UL (formerly Underwriters Laboratories, Inc.), 12 Laboratory Drive, Research Triangle Park, NC 27709, 919-549-1400, <http://www.ul.com/>.

(1) UL 217—Standard for Safety for Single and Multiple Station Smoke Alarms, Sixth Edition, dated August 25, 2006 (including revisions through November 20, 2012), IBR approved for §142.330(b) of this subchapter.

(2) UL 1104—Standards for Safety for Marine Navigation Lights, Second Edition, dated October 29, 1998, IBR approved for §143.415(a) of this subchapter.

(3) UL 1275—Standard for Safety for Flammable Liquid Storage Cabinets, Third Edition, dated June 30, 2005 (including revisions through February 26, 2010), IBR approved for §142.225(c) of this subchapter.

### § 136.115 Equivalents.

(a) The Coast Guard may approve any arrangement, fitting, appliance, apparatus, equipment, calculation, information, or test that provides a level of safety equivalent to that established by any specific provision of this subchapter. Submit requests for approval to the Coast Guard via the cognizant OCMI. The Marine Safety Center may

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require engineering evaluations and tests to verify the equivalence.

(b) The Coast Guard may accept compliance with the provisions of SOLAS applicable to the vessel's size and route (incorporated by reference, see §136.112), as an equivalent to specific requirements of this subchapter. Submit requests for a determination of equivalency for a particular vessel to the Coast Guard via the cognizant OCMI.

(c) Alternative compliance arrangement provisions related to SMSs are contained in §138.225 of this subchapter.

(d) Alternate compliance arrangements must be documented within the TSMS applicable to the vessel.

### § 136.120 Special consideration.

Based on a review of relevant information and on the TSMS applicable to the vessel, the cognizant OCMI who issues the COI may give special consideration to authorizing departures from specific requirements, when unusual circumstances or arrangements warrant such departures and when an equivalent level of safety is provided.

### § 136.130 Options for documenting compliance to obtain a Certificate of Inspection.

(a) There are two options for documenting compliance with the requirements in this subchapter to obtain a COI:

(1) The Coast Guard option, in which all inspections of the towing vessel are conducted by the Coast Guard, as discussed in §136.210 and parts 137 and 140 through 144 of this subchapter; or

(2) The TSMS option, as discussed in §136.210, and in parts 137 through 144 of this subchapter.

(b) Regardless of the option chosen, the Coast Guard is responsible for issuing a towing vessel COI, and may board a vessel at any time to verify compliance and take appropriate action.

(c) An owner or managing operator choosing the Coast Guard option may use a management system, vessel operations manual, towing vessel record (TVR), or logbook to meet this subchapter's recordkeeping requirements.

(d) When submitting an application for inspection, the owner or managing operator must specify on the application which option he or she chooses for each particular towing vessel. Owners or managing operators may choose different options for the individual vessels within their fleets.

(e) Requests to change options during the period of validity of an existing COI must be accompanied by an application to the OCMI for a new COI. If the requirements for the new option are met, the OCMI will issue the vessel a new COI.

**§ 136.172 Temporary compliance for existing towing vessels.**

An existing towing vessel subject to this subchapter will remain subject to Coast Guard regulations applicable to the vessel on July 19, 2016 until either July 20, 2018 or the date the vessel obtains a COI, whichever date is earlier.

**§ 136.175 Approved equipment.**

Where equipment in this subchapter is required to be of an approved type, such equipment requires the specific approval of the Coast Guard. A list of approved equipment and materials may be found online at <http://cgmix.uscg.mil/Equipment/EquipmentSearch.aspx>. Any OCMI may be contacted for information concerning approved equipment and materials.

**§ 136.180 Appeals.**

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal in accordance with 46 CFR 1.03.

**Subpart B—Certificate of Inspection**

**§ 136.200 Certificate required.**

(a) A towing vessel may not be operated without having onboard a valid COI issued by the Coast Guard as required by § 136.202.

(b) Each towing vessel certificated under the provisions of this subchapter must be in full compliance with the terms of the COI.

(c) If necessary to prevent the delay of the vessel, the Coast Guard may issue a temporary COI to a towing ves-

sel, pending the issuance and delivery of the permanent COI. The temporary COI must be carried in the same manner as the regular COI and is equivalent to the permanent COI that it represents.

(d) A towing vessel on a foreign voyage between a port in the United States and a port in a foreign country whose COI expires during the voyage may lawfully complete the voyage without a valid COI, provided the voyage is completed within 30 days of expiration, and provided that the COI did not expire within 15 days of sailing on the foreign voyage from a U.S. port.

**§ 136.202 Certificate of Inspection phase-in period.**

(a) All owners or managing operators of more than one existing towing vessel required to have a COI by this subchapter must ensure that each existing towing vessel under their ownership or control is issued a valid COI according to the following schedule:

(1) By July 22, 2019, at least 25 percent of the towing vessels must have valid COIs on board;

(2) By July 20, 2020, at least 50 percent of the towing vessels must have valid COIs on board;

(3) By July 19, 2021, at least 75 percent of the towing vessels must have valid COIs on board; and

(4) By July 19, 2022, 100 percent of the towing vessels must have valid COIs on board.

(b) All owners or managing operators of only one existing towing vessel required to have a COI by this subchapter must ensure the vessel has an onboard, valid COI by July 20, 2020.

(c) A new towing vessel must obtain a COI before it enters into service.

**§ 136.205 Description.**

A towing vessel's COI describes the vessel, routes that it may travel, minimum manning requirements and total persons allowed onboard, safety equipment and appliances required to be onboard, horsepower, and other information pertinent to the vessel's operations as determined by the OCMI.

**§ 136.210 Obtaining or renewing a COI.**

Owners and managing operators must submit Form CG-3752, "Application for

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Inspection of U.S. Vessel," to the cognizant OCMI where the inspection will take place. The owner or managing operator must submit the application at least 30 days before the vessel will undergo the initial inspection for certification. The owner or managing operator must schedule an inspection for this initial certification with the cognizant OCMI at least 3 months before the vessel is to undergo the inspection for certification.

(a) In addition to Form CG-3752, the owner or managing operator must submit:

(1) For initial certification:

- (i) Vessel particular information; and
- (ii) Number of persons in addition to the crew, if requested; or

(2) For a renewal of certification:

- (i) Any changes to the information in paragraph (a)(1) of this section; and
- (ii) A description of any modifications to the vessel.

(b) In addition to Form CG-3752 and the requirements of paragraph (a) of this section, the owner or managing operator of vessels utilizing the TSMS option must submit:

(1) Objective evidence that the owner or managing operator and the vessel are in compliance with the TSMS requirements in part 138 of this subchapter; and

(2) Objective evidence that the vessel's structure, stability, and essential systems comply with the applicable requirements of this subchapter for the intended route and service. This objective evidence may be in the form of a survey report issued by a TPO or another form acceptable to the Coast Guard.

### § 136.212 Inspection for certification.

(a) *Frequency of inspections.* After a towing vessel receives its initial COI, the OCMI will inspect a towing vessel subject to this subchapter located in his or her jurisdiction at least once every 5 years. The OCMI must ensure that every towing vessel is of a structure suitable for its intended route. If the OCMI deems it necessary, he or she may direct the vessel to get underway, and may adopt any other suitable means to test the towing vessel and its equipment.

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(b) *Nature of inspection.* The inspection will ensure that the vessel is in satisfactory condition and fit for the service for which it is intended, and that it complies with the applicable statutes and regulations for such vessels. The inspection will include inspections of the structure, pressure vessels and their appurtenances, piping, main and auxiliary machinery, electrical installations, lifesaving appliances, fire detecting and extinguishing equipment, pilot boarding equipment, and other equipment. The inspection will also determine that the vessel is in possession of any valid certificates or licenses issued by the Federal Communications Commission, if required. The inspection will also include an examination of the vessel's lights, means of making sound signals and distress signals, and pollution prevention systems and procedures.

(c) *Time of issuance of COI.* The OCMI will issue a vessel a new COI after the vessel successfully completes the inspection for certification.

### § 136.215 Period of validity.

(a) A COI for a towing vessel is valid for 5 years from the date of issue.

(b) For a towing vessel utilizing the TSMS option, the COI is invalid upon the expiration or revocation of the owner or managing operator TSMS certificate or the ISM Code Certificate.

(c) A COI may be suspended and withdrawn or revoked by the cognizant Officer in Charge, Marine Inspection at any time for noncompliance with the requirements of this subchapter.

### § 136.220 Posting.

(a) The original COI must be framed under glass or other transparent material and posted in a conspicuous place onboard the towing vessel.

(b) If posting is impracticable, the COI must be kept on board in a weathertight container and must be readily available.

### § 136.230 Routes permitted.

(a) The area of operation for each towing vessel and any necessary operational limits are determined by the cognizant OCMI and recorded on the vessel's COI. Each area of operation, referred to as a route, is described on

the COI under the major headings "Oceans," "Coastwise," "Limited Coastwise," "Great Lakes," "Lakes, Bays, and Sounds," or "Rivers," as applicable. Additional limitations imposed or extensions granted are described by reference to bodies of waters, geographical points, distances from geographical points, distances from land, depths of channel, seasonal limitations, and similar factors.

(b) Operation of a towing vessel on a route of lesser severity than those specifically described or designated on the COI is permitted, unless the route is expressly prohibited on the COI. The general order of decreasing severity of routes is: Oceans; coastwise; limited coastwise; Great Lakes; lakes, bays, and sounds; and rivers. The cognizant OCMI may prohibit a vessel from operating on a route of lesser severity than the primary route on which a vessel is authorized to operate, if local conditions necessitate such a restriction.

(c) When designating a permitted route or imposing any operational limits on a towing vessel, the cognizant OCMI may consider:

(1) The route-specific requirements of this subchapter;

(2) The performance capabilities of the vessel based on design, scantlings, stability, subdivision, propulsion, speed, operating modes, maneuverability, and other characteristics;

(3) The suitability of the vessel for nighttime operations and use in all weather conditions;

(4) Vessel operations in globally remote areas or severe environments not covered by this subchapter. Such areas may include, but are not limited to, polar regions, remote islands, areas of extreme weather, or other remote areas where timely emergency assistance cannot be anticipated; and

(5) The TSMS applicable to the vessel, if the vessel has one.

**§ 136.235 Certificate of Inspection amendment.**

(a) An amended COI may be issued at any time by the cognizant OCMI. The amended COI replaces the original, but the expiration date remains the same as that of the original. An amended COI may be issued to authorize and record a change in the dimensions,

gross tonnage, owner, managing operator, manning, persons permitted, route permitted, conditions of operations, or equipment of a towing vessel, from that specified in the current COI.

(b) The owner or managing operator of the towing vessel must make a request for an amended COI to the cognizant OCMI any time there is a change in the character of the vessel or in its route, equipment, ownership, operation, or similar factors specified in its current COI. The OCMI may need to conduct an inspection before issuing an amended COI.

(c) For those vessels selecting the TSMS option, the owner or managing operator of the towing vessel must provide to the OCMI objective evidence of compliance with the requirements in this subchapter prior to the issuance of an amended COI. The evidence must:

(1) Be from a TPO and prepared in accordance with parts 138 and 139 of this subchapter; and

(2) Consider the change in the character of a vessel or in its route, equipment, ownership, operation, or similar factors specified in the vessel's current COI.

**§ 136.240 Permit to proceed.**

Permission to proceed to another port for repairs (Form CG-948) may be required for a towing vessel that is no longer in compliance with its COI. This permission may be necessary in certain situations, including damage to the vessel, failure of an essential system, or failure to comply with a regulation, including failure to comply with the TSMS requirements, if appropriate.

(a) *What a vessel with a TSMS must do before proceeding to another port for repairs.* A vessel with a TSMS may proceed to another port for repair, if:

(1) In the judgment of the owner, managing operator, or master, the trip can be completed safely;

(2) The TSMS addresses the condition of the vessel that has resulted in non-compliance and the necessary conditions under which the vessel may safely proceed to another port for repair;

(3) The vessel proceeds as provided in the TSMS and does not tow while proceeding, unless the owner or managing

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operator determines that it is safe to do so; and

(4) The owner or managing operator notifies the cognizant OCMI in whose zone the non-compliance occurred or is discovered, before the vessel proceeds. The owner or operator must also notify the cognizant OCMI in any other OCMI zones through which the vessel will transit.

(b) *What another vessel must do before proceeding to another port for repairs.* If a vessel does not have a TSMS, or a vessel has one but it does not address the condition of the vessel that has resulted in non-compliance or the necessary conditions under which the vessel may safely proceed to another port for repair, the owner, managing operator, or master must request permission to proceed from the cognizant OCMI in whose zone the non-compliance occurs or is discovered. This permission operates as follows:

(1) The request for permission to proceed may be made electronically, in writing, or orally. The cognizant OCMI may require a written description, a damage survey, or other documentation to assist in determining the nature and seriousness of the non-compliance.

(2) The vessel will not engage in towing, unless the cognizant OCMI determines it is safe to do so.

(3) The Coast Guard may issue the permit either on Form CG-948, "Permit to Proceed to Another Port for Repairs," or in letter form, and will state the conditions under which the vessel may proceed to another port for repair.

(c) *Inspection or examination.* The cognizant OCMI may require an inspection of the vessel by a Coast Guard Marine Inspector or an examination by a surveyor from a TPO prior to the vessel proceeding.

**§ 136.245 Permit to carry an excursion party or temporary extension or alteration of route.**

(a) A towing vessel must obtain approval to engage in an excursion prior to carrying a greater number of persons than permitted by the COI, or to temporarily extend or alter its area of operation.

(b) For a vessel utilizing the TSMS option, the vessel may engage in an excursion, if:

(1) In the opinion of the owner, managing operator, or master the operation can be undertaken safely;

(2) The TSMS addresses the temporary excursion operation contemplated; the necessary conditions under which the vessel may safely conduct the operation, including the number of persons the vessel may carry; the crew required; and any additional lifesaving or safety equipment required;

(3) The vessel proceeds as provided in the TSMS; and

(4) The owner, managing operator, or master notifies the cognizant OCMI at least 48 hours prior to the temporary excursion operation. The cognizant OCMI may require submission of pertinent provisions of the TSMS applicable to the vessel for review and onboard verification of compliance. If the cognizant OCMI has reasonable cause to believe that the TSMS applicable to the vessel is insufficient for the intended excursion, additional information may be requested and/or additional requirements may be imposed.

(c) If the towing vessel is not under a TSMS, or the TSMS applicable to the vessel does not address the temporary excursion operation:

(1) The owner or managing operator must submit an application to the cognizant OCMI. The application must state the intended route, number of passengers or guests, and any other conditions applicable to the excursion that exceed those specified in its COI.

(2) The cognizant OCMI may issue the permit either on Form CG-949, "Permit To Carry Excursion Party," or in letter form. The cognizant OCMI will indicate on the permit the conditions under which it is issued, the number of persons the vessel may carry, the crew required, any additional lifesaving or safety equipment required, the route for which the permit is granted, and the dates on which the permit is valid. The application may be made electronically, in writing, or orally.

(3) The vessel may not engage in towing during the excursion, unless the

cognizant OCMI determines it is safe to do so.

(d) The cognizant OCMI may require an inspection of the vessel by a Coast Guard Marine Inspector or an examination by a surveyor from a TPO prior to the vessel proceeding.

**§ 136.250 Load lines.**

Vessels described in Table 136.250 of this section that operate on the Great Lakes or outside the Boundary Lines, as set forth in 46 CFR part 7, are subject to load line requirements in subchapter E of this chapter in the following circumstances:

TABLE 136.250

A vessel that—	Is subject to load line requirements in subchapter E of this chapter if it is—
(a) Is on an international voyage—	(1) Seventy nine (79) feet (24 meters) or more in length and built on or after July 21, 1968; or (2) One hundred and fifty (150) gross tons or more if built before July 21, 1968.
(b) Is on a domestic voyage—	(1) Seventy nine (79) feet (24 meters) or more in length and built on or after January 1, 1986; or (2) One hundred and fifty (150) gross tons or more if built before January 1, 1986.

**PART 137—VESSEL COMPLIANCE**

**Subpart A—General**

Sec.

- 137.100 Purpose.
- 137.120 Responsibility for compliance.
- 137.130 Program for vessel compliance for the Towing Safety Management System (TSMS) option.
- 137.135 Reports and documentation required for the TSMS option.

**Subpart B—Inspections and Surveys for Certification**

- 137.200 Documenting compliance for the Coast Guard inspection option.
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- 137.205 External survey program.
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**Subpart C—Drydock and Internal Structural Surveys**

- 137.300 Intervals for drydock and internal structural examinations.
- 137.302 Documenting compliance for the Coast Guard inspection option.
- 137.305 Documenting compliance for the TSMS option.
- 137.310 External survey program.
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- 137.317 Coast Guard oversight of drydock and internal structural examination program for vessels under the TSMS option.
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- 137.322 Classed vessels.

- 137.325 General conduct of examination.
- 137.330 Scope of the drydock examination.
- 137.335 Underwater survey in lieu of drydocking.

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**Subpart A—General**

**§ 137.100 Purpose.**

This part describes the procedures owners or managing operators of towing vessels must use to demonstrate compliance with the requirements of this subchapter.

**§ 137.120 Responsibility for compliance.**

(a) The owner and managing operator must ensure that the towing vessel is in compliance with this subchapter and other applicable laws and regulations at all times.

(b) Non-conformities and deficiencies must be corrected in a timely manner.

**§ 137.130 Program for vessel compliance for the Towing Safety Management System (TSMS) option.**

The owner or managing operator of a towing vessel choosing to use the TSMS option must implement an external or internal survey program for vessel compliance. The program for vessel compliance can be either:

(a) An external survey program, in which the owner or managing operator

would have a third-party organization (TPO) conduct either the surveys required by § 137.205, the examinations required by § 137.310, or both; or

(b) An internal survey program, in which the owner or managing operator would conduct either the surveys required by § 137.210, the examinations required by § 137.315, or both, using internal resources or contracted surveyors. The internal survey program would be conducted with the oversight of a TPO.

(c) Each program of either type must include:

(1) Owner or managing operator policy regarding the surveying and examination of towing vessels;

(2) Procedures for conducting towing vessel surveys and examinations, as described in this part;

(3) Procedures for reporting and correcting non-conformities and deficiencies;

(4) Identification of the individual or individuals responsible for the management of the program, and their qualifications; and

(5) Documentation of compliance activities.

**§ 137.135 Reports and documentation required for the TSMS option.**

(a) The TSMS option requires a report detailing each internal survey of a towing vessel. Each report must include:

(1) Vessel name;

(2) Other vessel identifier, such as an official number or State number;

(3) Name and business address of owner or managing operator;

(4) Date and location of the survey;

(5) Date the report of the survey was issued, if different than the date the survey was concluded;

(6) Name of the surveyors;

(7) Name and business address of the TPO the surveyors represent, if applicable;

(8) Signatures of surveyors;

(9) A descriptive list of the items examined or witnessed during each survey;

(10) A descriptive list of all non-conformities identified during each survey, including those that were corrected during the course of the survey;

(11) A descriptive list of:

(i) All non-conformities remaining at the end of each survey;

(ii) The required corrective actions;

(iii) The latest date of required corrective action; and

(iv) A description of the means by which the corrective actions were verified;

(12) A descriptive list of items that need to be repaired or replaced before the vessel continues service; and

(13) A statement that the vessel complies with the applicable requirements of this subchapter and is fit for its route and service, subject to the correction of non-conformities.

(b) The owner or managing operator must provide objective evidence of compliance with this part in accordance with the TSMS applicable to the vessel.

**Subpart B—Inspections and Surveys for Certification**

**§ 137.200 Documenting compliance for the Coast Guard inspection option.**

A towing vessel subject to this subchapter and choosing the Coast Guard inspection option, or required to have the Coast Guard inspection option, must undergo an annual inspection within 3 months before or after the COI anniversary date.

(a) Owners and managing operators must contact the cognizant Officer in Charge, Marine Inspection (OCMI) to schedule an inspection at a time and place the OCMI approves. No written application is required.

(b) Annual inspections will be similar to the inspection for certification but will cover less detail unless the marine inspector finds deficiencies or determines that a major change has occurred since the last inspection. If the marine inspector finds deficiencies or finds that a major change to the vessel has occurred, he or she will conduct a more detailed inspection to ensure that the vessel is in satisfactory condition and fit for the service for which it is intended. If the vessel passes the annual inspection, the Coast Guard will endorse the vessel's current Certificate of Inspection (COI).

(c) If the annual inspection reveals the need, the owner or managing operator must make any or all repairs or

improvements within the time period specified by the OCMI. The OCMI may use Form CG-835, "Notice of Merchant Marine Inspection Requirements," to record deficiencies discovered during the inspection. The OCMI will then give a copy of the completed form to the master of the vessel.

(d) Nothing in this subpart limits the marine inspector from conducting any tests or inspections he or she deems necessary to be assured of the vessel's seaworthiness or fitness for its route and service.

**§ 137.202 Documenting compliance for the TSMS option.**

The owner or managing operator of a towing vessel that chooses the TSMS option for a towing vessel must document compliance with this subpart as follows:

(a) Prior to obtaining the vessel's initial COI, the owner or managing operator must provide a report to the Coast Guard of a survey as described in § 137.215 that demonstrates that the vessel complies the requirements of this part.

(b) For the re-issuance of the vessel's COI, the owner or managing operator must:

(1) Provide objective evidence of an external survey program as described in § 137.205; or

(2) Provide objective evidence of an internal survey program as described in § 137.210.

**§ 137.205 External survey program.**

(a) The owner or managing operator of a towing vessel that has selected the TSMS option and who has chosen to demonstrate compliance through an external survey program must:

(1) Have the vessel surveyed annually by a surveyor from a TPO;

(2) Ensure the survey is conducted in accordance with § 137.215;

(3) Ensure the survey is conducted within 3 months of the anniversary date of the COI;

(4) Ensure the TSMS applicable to the vessel includes policies and procedures for complying with this section; and

(5) Make the applicable sections of the TSMS available to the surveyor.

(b) The TPO must issue a report that meets the requirements in § 137.135.

**§ 137.210 Internal survey program.**

(a) The owner or managing operator of a towing vessel that has selected the TSMS option and who has chosen to demonstrate vessel compliance through an internal survey program must ensure that the TSMS applicable to the vessel includes:

(1) Procedures for surveying and testing described in § 137.215;

(2) Equipment, systems, and onboard procedures to be surveyed;

(3) Identification of items that would need repair or replacement before the vessel could continue in service, such as deficiencies identified on Form CG-835, "Notice of Merchant Marine Inspection Requirements," noted survey deficiencies, non-conformities, or other corrective action reports;

(4) Procedures for documenting and reporting non-conformities and deficiencies;

(5) Procedures for reporting and correcting major non-conformities;

(6) The responsible person or persons in management who have the authority to:

(i) Stop all vessel operations pending the correction of non-conformities and deficiencies;

(ii) Oversee vessel compliance activities; and

(iii) Track and verify that non-conformities and deficiencies were corrected;

(7) Procedures for recordkeeping; and

(8) Procedures for assigning personnel with requisite experience and expertise to carry out the elements of the survey.

(b) The owner or managing operator is not required to survey the items as described in § 137.220 as one event, but may survey items on a schedule over time, provided that the interval between successive surveys of any item does not exceed 1 year, unless otherwise prescribed.

**§ 137.212 Coast Guard oversight of vessel survey program for vessels under the TSMS option.**

If the cognizant OCMI has reasonable cause to believe that a vessel's survey program is deficient, that OCMI may:

## § 137.215

(a) Require an audit or survey of the vessel in the presence of a representative of the cognizant OCMI;

(b) Increase the frequency of the audits;

(c) For vessels under the internal survey program, require that the vessel comply with the external survey program requirements of §137.205;

(d) Require any other specific action within his or her authority that he or she considers appropriate; or

(e) For repeatedly deficient surveys, remove the vessel and or owner or managing operator from using the TSMS option.

### § 137.215 General conduct of survey.

(a) When conducting a survey of a towing vessel as required by this subpart, the surveyor must determine that the item or system functions as designed, is free of defects or modifications that reduce its effectiveness, is suitable for the service intended, and functions safely in a manner consistent for vessel type, service and route.

(b) The survey must address the items in §137.220 as applicable, and must include:

(1) A review of certificates and documentation held on the vessel;

(2) A visual examination and tests of the vessel and its equipment and systems in order to confirm that their condition is properly maintained and that proper quantities are onboard;

(3) A visual examination of the systems used in support of drills or training to determine that the equipment utilized during a drill operates as intended; and

(4) A visual examination to confirm that unapproved modifications were not made to the vessel or its equipment.

(c) Beyond the minimum standards required by this section, the thoroughness and stringency of the survey will depend upon the condition of the vessel and its equipment. If a surveyor finds a vessel to have multiple deficiencies indicative of systematic failures to maintain the installed equipment, he or she will conduct an expanded examination to ensure all deficiencies are identified and corrective action is promptly taken.

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(d) The owner or managing operator must notify the cognizant OCMI when the condition of the vessel, its equipment, systems, or operations, create an unsafe condition.

(e) The cognizant OCMI may require that the owner or managing operator provide for the attendance of a surveyor or auditor from a TPO to assist with verifying compliance with this part.

### § 137.220 Scope.

The owner or managing operator of a towing vessel that has selected the TSMS option must examine or must have examined the following systems, equipment, and procedures to ensure that the vessel and its equipment are suitable for the service for which the vessel is certificated:

(a) *TSMS*. (1) Verify that the vessel is enrolled in a TSMS that complies with part 138 of this subchapter.

(2) Verify that the policies and procedures applicable to the vessel are available to the crew.

(3) Verify that internal and external audits are conducted in accordance with the approved TSMS.

(4) Verify that recordkeeping requirements are met.

(b) *Hull structure and appurtenances*. Verify that the vessel complies with part 144 of this subchapter, examine the condition of, and where appropriate, witness the operation of the following:

(1) All accessible parts of the exterior and interior of the hull, the watertight bulkheads, and weather decks.

(2) All watertight closures in the hull, decks, and bulkheads, including through hull fittings and sea valves.

(3) Superstructure, masts, and similar arrangements constructed on the hull.

(4) Railings and bulwarks and their attachments to the hull structure.

(5) The presence of appropriate guards or rails.

(6) All weathertight closures above the weather deck and the provisions for drainage of sea water from the exposed decks.

(7) Watertight doors, verifying local and remote operation and proper fit.

(8) All accessible interior spaces to ensure that they are adequately ventilated and drained, and that means of escape are maintained and operate as intended.

(9) Vessel markings.

(c) *Machinery, fuel, and piping systems.* Verify that the vessel complies with applicable requirements contained in part 143 of this subchapter, examine the condition of, and where appropriate, witness the operation of:

(1) Engine control mechanisms, including primary and alternate means, if the vessel is equipped with alternate means, of starting machinery, directional controls, and emergency shut-downs;

(2) All machinery essential to the routine operation of the vessel, including generators and cooling systems;

(3) All fuel systems, including fuel tanks, tank vents, piping, and pipe fittings;

(4) All valves in fuel lines, including local and remote operation;

(5) All overboard discharge and intake valves and watertight bulkhead pipe penetration valves;

(6) Means provided for pumping bilges; and

(7) Machinery shut-downs and alarms.

(d) *Steering systems.* Examine the condition of, and where appropriate, witness the operation of:

(1) Steering systems and equipment ensuring smooth operation;

(2) Auxiliary means of steering, if installed; and

(3) Alarms.

(e) *Pressure vessels and boilers.* Verify that the vessel complies with applicable requirements in part 143 of this subchapter.

(f) *Electrical.* Verify that the vessel complies with applicable requirements in part 143 of this subchapter, examine the condition of, and where appropriate, witness the operation of:

(1) All cables, as far as practicable, without undue disturbance of the cable or electrical apparatus;

(2) Circuit breakers, including testing by manual operation;

(3) Fuses, including ensuring the ratings of fuses are suitable for the service intended;

(4) All generators, motors, lighting fixtures, and circuit interrupting devices;

(5) Batteries including security of stowage;

(6) Electrical equipment, which operates as part of or in conjunction with a fire detection or alarm system installed onboard, to ensure operation in case of fire; and

(7) All emergency electrical systems, including any automatic systems if installed.

(g) *Lifesaving.* Verify that the vessel complies with applicable requirements contained in part 141 of this subchapter and examine the condition of lifesaving equipment and systems as follows:

(1) Verify that the vessel is equipped with the required number of lifejackets, work vests, and immersion suits.

(2) Verify the serviceable condition of each lifejacket, work vest, and marine buoyant device.

(3) Verify that each item of lifesaving equipment found to be defective has been repaired or replaced.

(4) Verify that each lifejacket, other personal floatation device, or other lifesaving device found to be defective and incapable of repair was destroyed or removed.

(5) Verify that each piece of expired lifesaving equipment has been replaced.

(6) Examine each survival craft and launching appliance in accordance with subchapter W of this chapter.

(7) Verify the servicing of each inflatable liferaft, inflatable buoyant apparatus, and inflatable lifejacket as required by subchapter W of this chapter.

(8) Verify the proper servicing of each hydrostatic release unit, other than a disposable hydrostatic release unit, as required under subchapter W of this chapter.

(9) Verify that the vessel's crew conducted abandon ship and man overboard drills under simulated emergency conditions.

(h) *Fire protection.* Verify that the vessel complies with applicable requirements contained in part 142 of this subchapter, and examine or verify the fire protection equipment and systems as follows:

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(1) Verify that the vessel is equipped with the required fire protection equipment for the vessel's route and service.

(2) Verify that the inspection, testing, and maintenance as required by §142.240 of this subchapter are performed.

(3) Verify that the training requirements of §142.245 of this subchapter are carried out.

(i) *Towing gear.* Verify that the vessel complies with the applicable requirements in parts 140 of this subchapter, and examine or verify the condition of, and where appropriate, the operation of the following:

(1) Deck machinery including controls, guards, alarms and safety features.

(2) Hawsers, wires, bridles, push gear, and related vessel fittings for damage or wear.

(3) Verify that the vessel complies with 33 CFR part 164, if applicable.

(j) *Navigation equipment.* Verify that the vessel complies with the applicable requirements in part 140 of this subchapter, and examine or verify the condition of and, where appropriate, the operation of the following:

(1) Navigation systems and equipment.

(2) Navigation lights.

(3) Navigation charts or maps appropriate to the area of operation and corrected up to date.

(4) Examine the operation of equipment and systems necessary to maintain visibility through the pilothouse windows.

(5) Verify that the vessel complies with 33 CFR part 164, if applicable.

(k) *Sanitary examination.* Examine the quarters, toilet and washing spaces, galleys, serving pantries, lockers, and similar spaces to ensure that they are clean and decently habitable.

(1) *Unsafe practices.* (1) Verify that all observed unsafe practices, fire hazards, and other hazardous situations are corrected, and that all required guards and protective devices are in satisfactory condition.

(2) Verify that bilges and other spaces are free of excessive accumulation of oil, trash, debris, or other matter that might create a fire hazard, clog bilge pumping systems, or block emergency escapes.

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(m) *Vessel personnel.* Verify that the: (1) Vessel is manned in accordance with the vessel's COI;

(2) Crew is maintaining vessel logs and records in accordance with applicable regulations and the TSMS appropriate to the vessel;

(3) Crew is complying with the crew safety and personnel health requirements of part 140 of this subchapter; and

(4) Crew has received training required by parts 140, 141, and 142 of this subchapter.

(n) *Prevention of oil pollution.* Examine the vessel to ensure compliance with the oil pollution prevention requirements in §140.655 of this subchapter.

(o) *Miscellaneous systems and equipment.* Examine all items in the vessel's outfit, such as ground tackle, markings, and placards that are required to be carried in accordance with the regulations in this subchapter.

### Subpart C—Drydock and Internal Structural Surveys

#### § 137.300 Intervals for drydock and internal structural examinations.

(a) Regardless of the option chosen to obtain a COI, upon obtaining a COI each towing vessel must then undergo a drydock and internal structural examination at the following intervals:

(1) A vessel that is exposed to salt water more than 6 months in any 12-month period since the last examination or initial certification must undergo a drydock and internal structural examination at least twice every 5 years, with not more than 36 months between examinations.

(2) A vessel that is exposed to salt water not more than 6 months in any 12-month period since the last examination or initial certification must undergo a drydock and internal structural examination at least once every 5 years.

(b) The cognizant OCMI may require additional examinations of the vessel whenever he or she discovers or suspects damage or deterioration to hull plating or structural members that may affect the seaworthiness or fitness for the route or service of a vessel.

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These examinations may include a drydock examination, including:

- (1) An internal structural examination of any affected space of a vessel, including its fuel tanks;
- (2) A removal of the vessel from service to assess the extent of the damage and to affect permanent repairs; or
- (3) An adjustment of the drydock examination intervals to monitor the vessel's structural condition.

### § 137.302 Documenting compliance for the Coast Guard inspection option.

The managing owner or managing operator of a towing vessel, who has selected the Coast Guard inspection option, must make their vessel available for the Coast Guard to conduct the examinations required by this subpart in accordance with the intervals prescribed in § 137.300.

### § 137.305 Documenting compliance for the TSMS option.

The owner or managing operator of a towing vessel, who has selected the TSMS option, must document compliance with this subpart as follows:

- (a) For vessels under the external survey program, provide objective evidence of compliance with § 137.310.
- (b) For vessels under the internal survey program, provide objective evidence of compliance with § 137.315.
- (c) Provide objective evidence that the vessel has undergone a drydock and internal structural examination, including options permitted in § 137.320 or § 137.322.

### § 137.310 External survey program.

(a) The owner or managing operator of a towing vessel that has selected the TSMS option and who has chosen to demonstrate compliance through an external survey program must:

- (1) Have the vessel examined by a surveyor from a TPO at the intervals prescribed in § 137.300;
- (2) Ensure the examination is conducted in accordance with § 137.325;
- (3) Ensure the TSMS applicable to the vessel includes policies and procedures for complying with this section; and
- (4) Make the applicable sections of the TSMS available to the surveyor.

(b) The drydock examination and internal structural examination must be documented in a report that contains the information required in § 137.135.

### § 137.315 Internal survey program.

(a) The owner or managing operator of a towing vessel that has selected the TSMS option and who has chosen to demonstrate vessel compliance with this subpart through an internal survey program must ensure that the TSMS applicable to the vessel includes:

- (1) A survey program that meets the requirements contained in § 137.325;
- (2) Qualifications of the personnel authorized to carry out a survey program that are comparable to the requirements of a surveyor from a TPO as described in § 139.130 of this subchapter;
- (3) Procedures for documenting and reporting non-conformities and deficiencies;
- (4) Procedures for reporting and correcting major non-conformities;
- (5) The identification of a responsible person in management who has the authority to stop all vessel operations pending corrections, to oversee vessel compliance activities, and to track and verify the corrections of non-conformities and deficiencies; and
- (6) Objective evidence that supports the completion of all elements of a vessel's drydock and internal structural examinations.

(b) The owner or managing operator must notify the TPO responsible for auditing the TSMS whenever activities related to credit drydocking or internal structural examinations are to be carried out prior to commencing the activities.

(c) The interval between examinations of each item may not exceed the applicable interval described in § 137.300.

(d) The owner or managing operator must notify the cognizant OCMI of the zone within which activities related to credit drydocking or internal structural examinations are to be carried out prior to commencing the activities.

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**§ 137.317 Coast Guard oversight of drydock and internal structural examination program for vessels under the TSMS option.**

If the cognizant OCMI has reasonable cause to believe the program for the drydock examination and internal structural examination is deficient, he or she may:

- (a) Require an audit of ongoing drydocking procedures and of documentation applicable to the vessel, in the presence of a representative of the cognizant OCMI;
- (b) Increase the frequency of the audits;
- (c) For vessels under the internal survey program, require an examination by a TPO;
- (d) Require any other action within his or her authority that he or she considers appropriate; or
- (e) For continued deficiencies, remove the vessel, owner, managing operator, or all three, from the TSMS option.

**§ 137.320 Vessels holding a valid load line certificate.**

A drydock and internal structural examination performed for a towing vessel to maintain a valid load line certificate issued in accordance with subchapter E of this chapter would count as an examination required under § 137.300.

**§ 137.322 Classed vessels.**

(a) A drydock and internal structural examination performed for a towing vessel to maintain class by the American Bureau of Shipping in accordance with their rules, as appropriate for the intended service and routes, would count as an examination required under § 137.300.

(b) A drydock and internal structural examination performed for a towing vessel to maintain class by a recognized classification society in accordance with their rules, as appropriate for the intended service and routes, would count as an examination required under § 137.300, provided the Coast Guard has accepted their applicable rules.

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**§ 137.325 General conduct of examination.**

(a) When conducting an examination of a towing vessel as required by this subpart, the surveyor must determine whether any defect, deterioration, damage, or modifications of the hull and related structure and components may adversely affect the vessel's seaworthiness or fitness or suitability for its route or service.

(b) The examination must address the items in § 137.330 as applicable, and must include:

- (1) Access to internal spaces as appropriate;
- (2) A visual examination of the external structure of the vessel to confirm that the condition is properly maintained; and
- (3) A visual examination to confirm that unapproved modifications were not made to the vessel.

(c) The thoroughness and stringency of the examination will depend upon the condition of the vessel.

(d) The owner or managing operator must notify the cognizant OCMI when the condition of the vessel may create an unsafe condition.

(e) The cognizant OCMI may require the owner or managing operator to provide for the attendance of a surveyor or auditor from a TPO to assist with verifying the vessel's compliance with the requirements in this subpart.

**§ 137.330 Scope of the drydock examination.**

(a) This regulation applies to all towing vessels covered by this subchapter. The drydock examination must be conducted while the vessel is hauled out of the water or placed in a drydock or slipway. The Coast Guard inspector or surveyor conducting this examination must:

(1) Examine the exterior of the hull, including bottom, sides, headlog, and stern, and examine all appendages for damage, fractures, wastage, pitting, or improper repairs;

(2) Examine each tail shaft for bends, cracks, and damage, including the sleeves or other bearing contact surfaces on the tail shaft for wear. The tail shaft need not be removed for examination if these items can otherwise be properly evaluated;

(3) Examine the rudders for damage, the upper and lower bearings for wear, and the rudder stock for damage or wear. Rudders need not be removed for examination if these items can be otherwise properly evaluated. This also includes other underwater components of steering and propulsion mechanisms;

(4) Examine the propellers for cracks and damage;

(5) Examine the exterior components of the machinery cooling system for leaks, damage, or deterioration;

(6) Open and examine all sea chests, through-hull fittings, and strainers for damage, deterioration, or fouling; and

(7) On wooden vessels, pull fastenings as required for examination.

(b) An internal structural examination required by this part may be conducted while the vessel is afloat or while it is out of the water. It consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating and planking; voids; and ballast, cargo, and fuel oil tanks. Where the internal framing, plating, or planking of the vessel is concealed, sections of the lining, ceiling, or insulation may be removed or the parts otherwise probed or exposed to determine the condition of the hull structure. Fuel oil tanks need not be cleaned out and internally examined if the general condition of the tanks is determined to be satisfactory by an external examination.

**§ 137.335 Underwater survey in lieu of drydocking.**

(a) This section applies to all towing vessels subject to this subchapter. If a TSMS is applicable to the vessel, the TSMS may include policies and procedures for employing and documenting an underwater survey in lieu of drydocking (UWILD). A vessel is eligible for UWILD if the Coast Guard determines that:

(1) There is no obvious damage or defect in the hull adversely affecting the seaworthiness or fitness for the vessel's route or service;

(2) The vessel has been operated satisfactorily since the last drydocking;

(3) The vessel is less than 15 years of age;

(4) The vessel has a steel or aluminum hull; and

(5) The vessel is fitted with a hull protection system.

(b) The owner or managing operator must submit an application to the cognizant OCMI at least 90 days before the vessel's next required drydock examination. The application must include:

(1) The procedure for carrying out the underwater survey;

(2) The time and place of the underwater survey;

(3) The method used to accurately determine the diver's or the remotely operated vehicle's location relative to the hull;

(4) The means for examining all through-hull fittings and appurtenances;

(5) The condition of the vessel, including the anticipated draft of the vessel at the time of the survey;

(6) A description of the hull protection system; and

(7) The names and qualifications of all personnel involved in conducting the UWILD.

(c) If a vessel is 15 years of age or older, the Commandant may approve a UWILD at alternating intervals provided that:

(1) All provisions of paragraphs (a) and (b) of this section are complied with, except that the vessel does not need to be less than 15 years of age; and

(2) During the vessel's drydock examination preceding the underwater survey, a complete set of hull gauging was taken which indicated that the vessel was free from hull deterioration.

**PART 138—TOWING SAFETY MANAGEMENT SYSTEM (TSMS)**

**Subpart A—General**

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**Subpart A—General**

**§ 138.100 Purpose.**

The purpose of this part is to prescribe requirements for owners or managing operators of towing vessels who adopt a Towing Safety Management System (TSMS) under this subchapter.

**§ 138.115 Compliance.**

Owners or managing operators selecting the TSMS option must obtain a TSMS certificate issued under § 138.305 at least 6 months before obtaining a Certificate of Inspection (COI) for any of their vessels covered by the TSMS certificate.

**Subpart B—Towing Safety Management System (TSMS)**

**§ 138.205 Purpose of a TSMS.**

(a) The purpose of a TSMS is to establish policies, procedures, and required documentation to ensure the owner or managing operator meets its established goals while ensuring continuous compliance with all regulatory requirements. The TSMS must contain a method to ensure all levels of the organization are working within the framework.

(b) A TSMS establishes and maintains:

(1) Management policies and procedures that serve as an operational protocol for all levels within management;

(2) Procedures to produce objective evidence that demonstrates compliance with the requirements of this subchapter;

(3) Procedures for an owner or managing operator to evaluate that they are following their own policies and procedures and complying with the requirements of this subchapter;

(4) Arrangements for a periodic evaluation by an independent third-party organization (TPO) to determine how well an owner or managing operator and their towing vessels are complying with their stated policies and procedures, and to verify that those policies and procedures comply with the requirements of this subchapter; and

(5) Procedures for correcting problems identified by management personnel and TPOs and facilitating continuous improvement.

**§ 138.210 Objectives of a TSMS.**

The TSMS, through policies, procedures, and documentation, must:

(a) *Demonstrate management responsibility.* The management must demonstrate that they implemented the policies and procedures as contained in the TSMS and the entire organization is adhering to their safety management program.

(b) *Document management procedures.* A TSMS must describe and document the owner or managing operator's organizational structure, responsibilities, procedures, and resources which ensure quality monitoring.

(c) *Ensure document and data control.* There must be clear identification of what types of documents and data are to be controlled, and who is responsible for controlling activities, including approval, issue, distribution, modification, removal of obsolete materials, and other related administrative functions.

(d) *Provide a process and criteria for selection of third parties.* Procedures for selection of TPOs must exist that include how third parties are evaluated, including selection criteria.

(e) *Establish a system of recordkeeping.* Records must be maintained to demonstrate effective implementation of

the TSMS. This must include audit records, non-conformity reports and corrective actions, auditor qualifications, auditor training, and other records as considered necessary.

(f) *Identify and meet training needs.* The owner or operator must establish and maintain documented procedures for identifying training needs and providing training.

(g) *Ensure adequate resources.* Identify adequate resources and procedures necessary to comply with the TSMS.

**§ 138.215 Functional requirements of a TSMS.**

The functional requirements of a TSMS include:

(a) Policies and procedures to provide direction for the safe operation of towing vessels and protection of the marine environment in compliance with applicable U.S. law, including the Code of Federal Regulations, and, if on an international voyage, applicable international conventions to which the United States is a party;

(b) Defined levels of authority and lines of communication between shore-side and vessel personnel;

(c) Procedures for reporting accidents and non-conformities;

(d) Procedures to prepare for and respond to emergency situations by shoreside and vessel personnel;

(e) Procedures for verification of vessel compliance with this subchapter;

(f) Procedures for internal auditing of the TSMS, including shoreside and vessel operations;

(g) Procedures for external audits;

(h) Procedures for management review of internal and external audit reports and correction of non-conformities; and

(i) Procedures to evaluate recommendations made by management and other personnel.

**§ 138.220 TSMS elements.**

The TSMS must include the elements listed in paragraphs (a) through (d) of this section. If an element listed is not applicable to an owner or managing operator, appropriate justification must be documented and is subject to acceptance by the TPO.

(a) *Administration and management organization.* A policy must be in place

that outlines the TSMS culture and how management intends to ensure compliance with this subpart. Supporting this policy, the following procedures and documentation must be included:

(1) *Management organization*—(i) *Responsibilities.* The management organization, authority, and responsibilities of individuals must be documented.

(ii) *Designated person.* Each owner or managing operator must designate in writing the shoreside person(s) responsible for ensuring the TSMS is implemented and continuously functions throughout management and the fleet. They must also designate the shoreside person(s) responsible for ensuring that the vessels are properly maintained and in operable condition, including those responsible for emergency assistance to each towing vessel.

(iii) *Master authority.* Each owner or managing operator must define the scope of the master's authority. The master's authority must provide for the ability to make final determinations on safe operations of the towing vessel. Specifically, it must provide the authority for the master to cease operation if an unsafe condition exists.

(2) *Audits*—(i) *Procedures for conducting internal and external audits.* The TSMS must contain procedures for audits in accordance with §§138.310 and 138.315.

(ii) *Procedures for identifying and correcting non-conformities.* The TSMS must contain procedures for any person to report non-conformities. The procedures must describe how an initial report should be made and the actions taken to follow-up and ensure appropriate resolution.

(b) *Personnel.* Policies must be in place that cover the owner or managing operator's approach to managing personnel, including, but not limited to, employment, training, and health and safety of personnel. Supporting these policies, the following procedures and documentation must be included:

(1) *Employment procedures.* The TSMS must contain procedures related to the employment of individuals. Procedures must be in place to ensure adequate qualifications of personnel, to include background checks, compliance with drug and alcohol standards, and that

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personnel are able to perform required tasks.

(2) *Training of personnel.* The TSMS must contain a policy related to the training of personnel, including:

- (i) New-hire orientation;
- (ii) Duties associated with the execution of the TSMS;
- (iii) Execution of operational duties;
- (iv) Execution of emergency procedures;
- (v) Occupational health;
- (vi) Crew safety; and
- (vii) Training required by this Subchapter.

(c) *Verification of vessel compliance.* Policies must be in place that cover the owner or managing operator's approach for ensuring vessel compliance, including, but not limited to, policies on maintenance and survey, safety, the environment, security, and emergency preparedness. Supporting these policies, the following procedures and documentation must be included:

(1) *Maintenance and survey.* Procedures outlining the owner or managing operator's survey regime must specify all maintenance, examination, and survey requirements, including the minimum qualifications of persons assigned to carry out required surveys the owner or managing operator is using the internal examination program. Applicable documentation must be maintained for all activities for a period of 5 years.

(2) *Safety, environment, and security.* Procedures must be in place to ensure safety of property, the environment, and personnel. This must include procedures to ensure the selection of the appropriate vessel, including adequate maneuverability and horsepower, appropriate rigging and towing gear, proper management of the navigational watch, and compliance with applicable security measures.

(d) *Compliance with this subchapter.* Procedures and documentation must be in place to ensure that each towing vessel complies with the operational, equipment, and personnel requirements of this subchapter.

**§ 138.225 Existing safety management systems (SMSs).**

(a) A safety management system (SMS) which is fully compliant with

the International Safety Management (ISM) Code requirements, implemented in 33 CFR part 96, will be deemed in compliance with TSMS-related requirements in this subchapter.

(b) Other existing SMSs may be considered for acceptance as meeting the TSMS requirements of this part. The Coast Guard may:

- (1) Accept such system in full;
- (2) Require modifications to the system as a condition of acceptance; or
- (3) Reject the system.

(c) An owner or managing operator who seeks to meet TSMS requirements using provisions in paragraph (a) or (b) of this section must submit documentation to the Coast Guard based on the initial audit and one full audit cycle of at least 3 years.

(d) The Coast Guard may elect to inspect equipment and records, including:

- (1) Contents of the SMS;
- (2) Objective evidence of internal and external audits;
- (3) Objective evidence that non-conformities were identified and corrected; and
- (4) Objective evidence of vessel compliance with applicable regulations.

**Subpart C—Documenting Compliance**

**§ 138.305 TSMS certificate.**

(a) The owner or managing operator will be issued a TSMS certificate by a TPO when his or her organization is deemed in compliance with the TSMS requirements. It should be kept on file at the owner or managing operator's shoreside office and available for review, at the request of the Coast Guard.

(b) A TSMS certificate is valid for 5 years from the date of issue, unless suspended, revoked or rescinded as provided in paragraphs (d) and (e) of this section.

(c) The vessel owner or managing operator must maintain a list of vessels currently covered by each TSMS certificate and must provide it to the Coast Guard upon request.

(d) A TSMS certificate may be suspended or revoked by the Coast Guard at any time for non-compliance with the requirements of this part.

(e) The TPO that issued the TSMS certificate may rescind the certificate for non-compliance with the requirements of this part.

(f) A copy of the TSMS certificate must be maintained on each towing vessel that is covered by the TSMS certificate and on file at the owner or managing operator's shoreside office.

**§ 138.310 Internal audits for a TSMS certificate.**

(a) Internal management audits must be conducted annually, within 3 months of the anniversary date of the TSMS certificate, to ensure the owner or managing operator is effectively implementing all elements of their TSMS.

(b) The internal management audit must ensure that management has implemented the TSMS throughout all levels of the organization, including audits of all the owner or managing operator's towing vessels to which a TSMS applies to ensure implementation at the operational level.

(c) The results of internal audits must be documented and maintained for a period of 5 years and made available to the Coast Guard upon request.

(d) Internal auditors:

(1) Must have knowledge of the management, its SMS, and the standards contained in this subchapter;

(2) Must have completed an ANSI/ISO/ASQ Q9001-2000 or ISO 9001:2008(E) (incorporated by reference, see § 136.112 of this subchapter) internal auditor/assessor course or Coast Guard-recognized equivalent;

(3) May not be the designated person, or any other person, within the organization that is responsible for development or implementation of the TSMS; and

(4) Must be independent of the procedures being audited, unless this is impracticable due to the size and the nature of the organization.

**§ 138.315 External audits for a TSMS certificate.**

External audits for obtaining and renewing a TSMS certificate are conducted through a TPO and must include both management and vessels as follows:

(a) *Management audits.* (1) Prior to the issuance of an owner or managing operator's initial TSMS certificate, or subsequent renewals, an external management audit must be conducted by an auditor from a TPO.

(2) A mid-period external management audit must be conducted between the 27th and 33rd month of the certificate's period of validity.

(b) *Vessel audits.* (1) An external audit must be conducted prior to the issuance of the initial COI for vessels subject to an owner or managing operator's TSMS that have been owned or operated for 6 or more months prior to receiving the initial COI.

(2) An external audit must be conducted no later than 6 months after the issuance of the initial COI for vessels subject to the owner or managing operator's TSMS that have been owned or operated for fewer than 6 months prior to receiving the initial COI.

(3) An external audit of all vessels covered by a TSMS certificate must be conducted during the 5-year period of validity of the TSMS certificate. The vessels must be selected randomly and distributed as evenly as possible.

(4) External audits may include the use of objective evidence which may be available at the owner or managing operator's corporate office. Some portions of this audit require visiting each vessel at some point during the 5-year period of validity of the TSMS certificate.

(c) *Documentation.* The results of the external audit must be documented and maintained for a period of 5 years and made available to the Coast Guard or the external auditor upon request.

**Subpart D—Audits**

**§ 138.400 General.**

Management and vessels are subject to internal and external audits to assess compliance with TSMS and the vessel standards requirements of this subchapter.

**§ 138.405 Conduct of internal audits.**

(a) Internal audits are conducted by, or on behalf of, the management and may be performed by a designated employee or by contracted individual(s)

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who conduct the audit as if an employee of the owner or managing operator.

(b) Internal audits are not necessarily conducted as one event; they can be taken in segments over time.

(c) Internal audits must be of sufficient depth and breadth to ensure the owner or managing operator established adequate procedures and documentation to comply with the TSMS requirements of this part, that the TSMS was implemented throughout all levels of the organization, and that the owner or managing operator's vessels comply with this subchapter and the TSMS.

(d) The auditor must have the authority to examine documentation, question personnel, examine vessel equipment, witness system testing, and observe personnel training, including drills, as necessary to verify TSMS effectiveness.

### § 138.410 Conduct of external audits.

(a) External audits must be conducted by an auditor from a TPO and cover all elements of the TSMS requirements of this subchapter, but may be conducted on a sampling basis of each of those TSMS elements.

(b) External audits must be of sufficient depth and breadth to ensure the owner or operating manager effectively implemented its TSMS throughout all levels of the organization, including onboard its vessels.

(c) The auditor must be provided access to examine any requested documentation, question personnel, examine vessel equipment, witness system testing, and observe personnel training, including drills, as necessary to verify TSMS effectiveness.

(d) The auditor may broaden the scope of the audit if:

(1) The TSMS is incomplete or not effectively implemented;

(2) Conditions found are not consistent with the records; or

(3) Unsafe conditions are identified.

(e) The auditor may verify compliance with vessel standards and TSMS requirements through a review of objective evidence such as checklists, invoices, and reports, and may conduct a visual sampling onboard the vessels to determine whether or not the condi-

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tions onboard the vessel are consistent with the records reviewed.

(f) If an auditor identifies a major non-conformity during the course of the external audit, then the auditor must notify the local Officer in Charge, Marine Inspection (OCMI) within 24 hours and the owner or managing operator's designated representative in accordance with the TSMS applicable to the vessel.

## Subpart E—Coast Guard or Organizational Oversight and Review

### § 138.500 Notification prior to audit.

(a) The owner or managing operator of a towing vessel must notify the local OCMI at least 72 hours prior to an external audit being conducted under this part.

(b) The Coast Guard may require that a Coast Guard representative accompany the auditor during part, or all, of an external audit.

(c) The Coast Guard may conduct a separate audit of the owner or managing operator or its towing vessels, at its discretion.

### § 138.505 Submittal of external audit results.

(a) *Submission of external management audits.* The results of an external management audit as required by § 138.315 must be submitted to the Towing Vessel National Center of Expertise within 30 days of audit completion by the TPO conducting the external audit. The mailing address for the Coast Guard Towing Vessel National Center of Expertise is 504 Broadway Street, Suite 101, Paducah, Kentucky 42001.

(b) *Submission of external vessel audits.* The results of any external vessel audits required by § 138.315 must be submitted to the cognizant OCMI within 30 days of audit completion by the TPO conducting the external audit.

(c) *Electronic submissions.* The results of external audits required by this section may be submitted electronically so long as the means used allows the Coast Guard to reliably verify the person making the submission and the authenticity of the records submitted. For those seeking to submit external

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audit records to the Coast Guard electronically, the TSMS must address the means to be used to make these electronic submissions.

### § 138.510 Required attendance.

(a) The TPO and the owner or managing operator may be required to explain or otherwise demonstrate areas of the TSMS to the Coast Guard if there is evidence that a TSMS, for which a TSMS certificate was issued, is not in compliance with the provisions of this part. The Coast Guard may require a third party's attendance at the vessel or the office of the owner or managing operator for this purpose.

(b) The Coast Guard will not bear any of the costs for a third party's attendance at the vessel or the office of the owner or managing operator when complying with this provision.

## PART 139—THIRD-PARTY ORGANIZATIONS

Sec.

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139.165 Documentation.

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### § 139.100 Purpose.

(a) This part states the requirements applicable to third-party organizations (TPOs) that conduct audits and surveys for towing vessels as required by this subchapter.

(b) The Commandant delegates to the Towing Vessel National Center of Expertise (TVNCOE) the authority to carry out the functions of this part as-

sociated with approval of TPOs, including revocation and suspension of approval.

### § 139.110 Organizations not subject to further approval.

(a) A recognized classification society, which has satisfied the requirements in 46 CFR 8.230, meets the requirements of a TPO for the purposes of this part and may perform the work as a third-party auditor.

(b) An authorized classification society, which has been authorized under 46 CFR part 8, subpart C or D, meets the requirements of a TPO for the purposes of this part and may perform the work as a third-party surveyor.

(c) The organizations qualifying as TPOs under paragraph (a) or (b) of this section must ensure that employees providing services under this part hold proper qualifications for the particular type of service being performed.

### § 139.115 General.

(a) The Coast Guard approves TPOs to carry out functions related to ensuring that towing vessels comply with provisions of this subchapter. Organizations may be approved to:

(1) Conduct audits of a Towing Safety Management System (TSMS), and the vessels to which the TSMS applies, to verify compliance with the applicable provisions of this subchapter;

(2) Issue TSMS certificates to the owner or managing operator who is in compliance with part 138 of this subchapter;

(3) Conduct surveys of towing vessels to verify compliance with the applicable provisions of this subchapter; and

(4) Issue survey reports detailing the results of surveys, carried out in compliance with part 137 of this subchapter.

(b) An organization seeking approval under this part must provide objective evidence to the Coast Guard that its program:

(1) Is independent of the owner or managing operator and vessels that it audits or surveys;

(2) Operates within a quality management system acceptable to the Coast Guard;

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(3) Ensures its auditors and surveyors are qualified and maintain continued competence;

(4) Demonstrates the ability to carry out the responsibilities of approval; and

(5) Meets all other requirements of this part.

(c) A list of TPOs will be maintained by the Coast Guard, and made available upon request.

**§ 139.120 Application for approval as a TPO.**

An organization, which may include a business entity or an association, desiring to be approved as a TPO under this part must submit a written request to the Towing Vessel National Center of Expertise, 504 Broadway St Suite 101, Paducah, KY 42001. The organization must provide the following information:

(a) A description of the organization, including the ownership, structure, and organizational components.

(b) A general description of the clients being served or intended to be served.

(c) A description of the types of work performed by the organization or by the principals of the organization in the past, noting the amount and extent of such work performed within the previous 3 years.

(d) Objective evidence of an internal quality system based on ANSI/ISO/ASQ Q9001–2000 (incorporated by reference, see § 136.112 of this subchapter) or an equivalent quality standard.

(e) Organization procedures and supporting documentation that describe processes used to perform an audit and records to show system effectiveness.

(f) Copies of checklists, forms, or other tools to be used as guides or for recording the results of audits and/or surveys.

(g) Organization procedures for appeals and grievances.

(h) The organization's code of ethics applicable to the organization and its auditors and/or surveyors.

(i) A list of the organization's auditors and/or surveyors who meet the requirements of § 139.130. This list must include the experience, background, and qualifications for each auditor and/or surveyor.

(j) A description of the organization's means of assuring continued competence of its personnel.

(k) The organization's procedures for terminating or removing auditors and/or surveyors.

(l) A description of the organization's means of assuring the availability of its personnel to meet the needs of the towing companies for conducting audits and surveys within the intervals established in this subchapter.

(m) A description of the organization's apprentice or associate program for auditors and/or surveyors.

(n) A statement that the Coast Guard may inspect the organization's facilities and records and may accompany auditors and/or surveyors in the performance of duties related to the requested approval.

(o) Disclosure of any potential conflicts of interest.

(p) A statement that the organization, its managers, and employees engaged in audits and/or surveys are not, and will not be involved in any activities which could result in a conflict of interest or otherwise limit the independent judgment of the auditor and/or surveyor or organization.

(q) Any additional information that the applicant deems pertinent.

**§ 139.125 Approval of TPO.**

(a) The Commandant delegates to the Towing Vessel National Center of Expertise (TVNCOE) the authority to carry out the review and approval described in this section, and the related authority to suspend and revoke approval.

(b) The Coast Guard will review the request and notify the organization in writing whether their request is granted.

(c) If a request for approval is denied, the Coast Guard will inform the organization of the reasons for the denial and will describe what corrections are required for an approval to be granted.

(d) An approval for a TPO that meets the requirements of this part will expire:

(1) Five years after the last day of the month in which it is granted;

(2) When the TPO gives notice that it will no longer offer towing vessel audit and/or survey services;

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(3) When revoked by the Coast Guard in accordance with § 139.150; or

(4) On the date of a change in ownership, as defined in § 136.110, of the TPO for which approval was granted.

### § 139.130 Qualifications of auditors and surveyors.

(a) A prospective auditor or surveyor must have the skills and experience necessary to assess compliance with all requirements of this subchapter.

(b) Auditors must meet the following qualifications:

(1) High school diploma or equivalent.

(2) Four years of working on towing vessels or other relevant marine experience such as Coast Guard marine inspector, licensed mariner, military personnel with relevant maritime experience, or marine surveyor.

(3) Successful completion of an ANSI/ISO/ASQ Q9001-2000 or ISO 9001:2008(E) (incorporated by reference, see § 136.112 of this subchapter) lead auditor/assessor course or Coast Guard recognized equivalent.

(4) Successful completion of a training course for the auditing of a TSMS.

(5) Audit experience, as demonstrated by:

(i) Documented experience in auditing the ISM Code or the American Waterways Operators Responsible Carrier Program, consisting of at least two management audits and six vessel audits within the past 5 years; or

(ii) Successful completion of an auditor apprenticeship, consisting of at least one management audit and three vessel audits under the direction of a lead auditor.

(c) Surveyors must meet the following qualifications:

(1) High school diploma or equivalent.

(2) At least one of the following:

(i) Four years of experience working on towing vessels as master, mate (pilot), or engineer; or

(ii) Other relevant marine experience such as Coast Guard marine inspector, military personnel with relevant maritime experience, marine surveyor, accredited marine surveyor, experience on vessels of similar operating and physical characteristics.

### § 139.135 Addition and removal of auditors and surveyors.

(a) A TPO must maintain a list of current and former auditors and surveyors.

(b) To add an auditor or surveyor, the TPO must submit that person's experience, background, and qualifications to the TVNCOE.

(c) The TVNCOE must be notified when an auditor or surveyor is removed from employment.

### § 139.140 Renewal of TPO approval.

(a) To renew an approval, a TPO must submit a written request to the TVNCOE at the address listed in § 139.120.

(b) For the request to be approved, the Coast Guard must be satisfied that the applicant continues to fully meet approval criteria.

(c) The Coast Guard may request any additional information necessary to properly evaluate the request.

### § 139.145 Suspension of approval.

(a) The Coast Guard may suspend the approval of a TPO approved under this part whenever the Coast Guard determines that the TPO does not comply with the provisions of this part. The Coast Guard must:

(1) Notify the TPO in writing of the intention to suspend the approval;

(2) Provide the details of the TPO's failure to comply with this part; and

(3) Advise the TPO of the time period, not to exceed 60 days, within which the TPO must correct its failure to comply with this part. If the TPO fails to correct its failure to comply with this part within the time period allowed, the approval will be suspended.

(b) The Coast Guard may also partially suspend the approval of a TPO, using the process described in paragraph (a) of this section. This may include suspension of an individual auditor or surveyor or suspension of the authority of the TPO to carry out specific duties whenever the Coast Guard determines that the provisions of this part are not complied with.

### § 139.150 Revocation of approval.

(a) The Coast Guard may revoke the approval of a TPO if the organization

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has demonstrated a pattern or history of:

- (1) Failure to comply with this part;
  - (2) Substantial deviations from the terms of the approval granted under this part; or
  - (3) Failures, including ethical violations, conflicts of interest, or inadequate performance, that indicate to the Coast Guard that the TPO is no longer capable of carrying out its duties as a TPO.
- (b) If the Coast Guard seeks to revoke the approval of a TPO, it must:
- (1) Notify the TPO in writing of the intention to revoke the approval;
  - (2) Provide the details of the TPO's demonstrated pattern or history of actions described in paragraph (a) of this section; and
  - (3) Advise the TPO that it may appeal this decision to the Coast Guard in accordance with the provisions of 46 CFR subpart 1.03.

**§ 139.155 Appeals of suspension or revocation of approval.**

Anyone directly affected by a decision to suspend or revoke an approval granted under this part may appeal the decision to the Coast Guard in accordance with the provisions of 46 CFR subpart 1.03.

**§ 139.160 Coast Guard oversight activities.**

(a) The Coast Guard will provide notice to the TPO 48 hours in advance of

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any site visit, unless the visit is in response to a complaint or other evidence of regulatory non-compliance. During the visit, the Coast Guard may:

- (1) Inspect a TPO's records;
  - (2) Conduct interviews of auditors or surveyors to aid in the evaluation of the organization; and
  - (3) Observe audits or surveys.
- (b) The Coast Guard may require that the owner or managing operator make available a copy of the TSMS upon request.
- (c) The Coast Guard may require a revision of a previously approved TSMS if it is determined that requirements of this subchapter are not met.

**§ 139.165 Documentation.**

- (a) Each TPO must retain the results of each survey or audit conducted under its approval, including:
- (1) The names of the auditors and/or surveyors;
  - (2) The results of each audit or survey conducted; and
  - (3) Documentation showing continuing actions relative to an audit or survey, such as resolution of deficiencies and non-conformities.
- (b) Each TPO must also retain the results of audits of their organization conducted by the Coast Guard.
- (c) Records required by this part must be retained for a period of 5 years.